

November 8, 2017

Marlene H. Dortch
FCC Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20054

Re: Notice of Oral Ex Parte:

In the Matter of Bridging the Digital Divide for Low-Income Consumers, WC
Docket No. 17-287, Lifeline and Link Up Reform and Modernization, WC
Docket No. 11-42, Telecommunications Carriers Eligible for Universal Service
Support, WC Docket No. 09-197

Dear Ms. Dortch:

On November 6, 2017 Olivia Wein, *National Consumer Law Center*;
Ariel Fox Johnson, *Common Sense Media/Kids Action*; Cheryl Leanza, *A Learned Hand
Consulting & United Church of Christ, OC Inc.*; Phillip Berenbroick, *Public Knowledge*;
Carmen Scurato, *National Hispanic Media Coalition*; Francella Ochillo, *National Hispanic
Media Coalition*, Gloria Tristani, *National Hispanic Media Coalition* and Eric Null, *Open
Technology Institute* met with Jay Schwartz, *Wireline Advisor*, *Office of Chairman Pai* and Nick
Degani, *Senior Counsel, Office of Chairman Pai*.

On November 6, 2017 Olivia Wein, *National Consumer Law Center*;
Ariel Fox Johnson, *Common Sense Media/Kids Action*; Phillip Berenbroick, *Public Knowledge*;
Francella Ochillo, *National Hispanic Media Coalition*, Gloria Tristani, *National Hispanic Media
Coalition* and Carmen Scurato, *National Hispanic Media Coalition* also met with Jodie Griffin,
Deputy Division Chief, TAPD, WCB; Allison Jones, *WCB*; Rashann Duvall, *WCB*; Allison
Baker, *WCB*; Ryan Palmer, *Division Chief, TAPD, WCB* and Trent Harkrader, *Associate Bureau
Chief, WCB*.

On November 7, 2017 Olivia Wein, *National Consumer Law Center*; Ariel Fox Johnson,
Common Sense Media /Kids Action; Kham Moua, *OCA – Asian Pacific American Advocates*;
Francella Ochillo, *National Hispanic Media Coalition*; Carmen Scurato, *National Hispanic*

Media Coalition; Gloria Tristani, National Hispanic Media Coalition; Phillip Berenbroick, Public Knowledge; Matt Wood, Free Press; Josh Stager, Open Technology Institute met separately with Jamie Susskind, Chief of Staff, Office of Commissioner Carr, Claude Aiken, Wireline Legal Advisor, Office of Commissioner Clyburn and Amy Bender, Wireline Legal Advisor, Office of Commissioner O'Rielly.

The topic of all five of these meetings was the Lifeline [Fourth Report and Order, Order on Reconsideration, Memorandum Opinion and Order, Notice of Proposed Rulemaking, and Notice of Inquiry](#) on the November 16, 2017 Commission Open Meeting Agenda. The diverse organizations participating in these meetings are advocates of civil rights, racial justice, media and technology rights, consumers, children and families. Out of the four Universal Service programs, Lifeline is the only one that is directly targeted to low-income households -- in all regions of the Nation -- to address the affordability barrier to service. The groups discussed their serious concerns about the prospect of the immediate loss of Lifeline service to low-income households if non-facilities based resellers are removed from the Lifeline program. Ms. Scurato noted that non-facilities based resellers are currently providing Lifeline service to around 70 percent of Lifeline households. Groups wanted to know if there was a transition plan and wanted assurance that there would be a facilities-based Lifeline provider in place before non-facilities based providers were removed from Lifeline in a service area. There was also concern that facilities-based providers would not participate in Lifeline. Ms. Scurato pointed to the exit of Lifeline providers after the 2016 modernization order. The groups also noted Lifeline relinquishments in the states by ILECs that have pointed solely to the presence of Lifeline resellers to demonstrate the availability of Lifeline service.

Mr. Berenbroick discussed the various disincentives in the Lifeline item for a provider to enter into the Lifeline program. These include the uncertainty, increased cost of business and disruption from a budget cap that could reset Lifeline disbursements midway through the year or fluctuate from year-to-year, to loss of a streamlined federal ETC designation process to requirements for rate design.

Ms. Tristani raised the serious concerns about the treatment of Tribes, pointing to the June 23, 2000 FCC Policy Statement establishing a government-to-government relationship with Tribes. The Lifeline Fourth Report and Order portion of the item changes the availability of enhanced Lifeline support to rural areas and eliminates enhanced Lifeline support for non-facilities based Lifeline providers, which serve a majority of Tribal Lifeline recipients, in addition to making other changes to the enhanced Lifeline program. In questioning whether there were adequate and appropriate tribal consultations and transparency, Ms. Tristani pointed to the following language in the Policy Statement:

2. The Commission, in accordance with the federal government's trust responsibility, and to the extent practicable, will consult with Tribal governments prior to implementing any regulatory action or policy that will significantly or uniquely affect Tribal governments, their land and resources.

3. The Commission will strive to develop working relationships with Tribal governments, and will endeavor to identify innovative mechanisms to facilitate

Tribal consultation in agency regulatory processes that uniquely affect telecommunications compliance activities, radio spectrum policies, and other telecommunications service-related issues on Tribal lands.¹

In addition to those topics, in the November 7th meetings, the groups also discussed the need to look at the cost-benefit of the proposed changes to the Lifeline program. Ms. Fox Johnson pointed to the recent report by Common Sense Media finding that in lower-income homes, one in four young kids lack access to high-speed internet.² Mr. Wood explained that the proposal to impose a program-wide cap makes no sense when the program is already shrinking rapidly, and when even at its highest point in 2012 Lifeline served well under half of the eligible low-income population.

He and Ms. Wein also described not just the administrability concerns with a proposed lifetime benefits limit for individuals and families, but the short-sightedness and harmful impacts of a proposal to deny otherwise eligible recipients the benefits they need in order to purchase and then afford communications services along with other necessities on an ongoing basis. Mr. Moua further illustrated how a lifetime individual benefits cap on Lifeline harms the very population Lifeline is serving. Mr. Moua described a low-income family in Minnesota with a single mom and kids ranging from 2 to 15. The household experienced food insecurity to the point where the mother put a lock on the refrigerator to ensure that the food would not run out mid-week. This low-income family relies on their Lifeline service for connectivity and because of the age range of the children, it would take at least 10-years before the family circumstances would be such that self-sufficiency were more achievable.

The groups appreciate the time provided by staff to discuss our concerns about the Lifeline item and would like to work on constructive proposals that strengthen the Lifeline program so that more eligible households are served with essential voice and broadband service in order to close the digital broadband divide.

Respectfully submitted



Olivia Wein
Staff Attorney
National Consumer Law Center
1001 Connecticut Avenue, NW, Suite 510
Washington, DC 20036
(202)452-6252, x103
owein@nclc.org

¹ See In the Matter of Statement of Policy Establishing a Government-to-Government Relationship with Indian Tribes, Policy Statement, FCC 00-207 (Rel. June 23, 2000) at pp. 4-5.

² See "The Common Sense census: Media use by kids age zero to eight" Survey of families with kids ages 0-8. 74% of children in lower-income homes have access to high-speed internet. Rideout, V. (2017) at 29. Available at <https://www.commonsensemedia.org/research/the-common-sense-census-media-use-by-kids-age-zero-to-eight-2017>

cc: Nick Degani
Jay Schwartz
Jamie Susskind
Claude Aiken
Amy Bender
Jodie Griffin
Allison Jones
Rashann Duvall
Allison Baker
Ryan Palmer
Trent Harkrader

att: Statement of Policy Establishing a Government-to-Government Relationship with Indian Tribes

In the Matter of)
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Statement of Policy on Establishing)
a Government-to-Government)
Relationship with Indian Tribes)

⁴ The Commission's goal of providing telecommunications services to reservations is also statutorily grounded in other provisions, including Sections 214(e)(3) and (6) and Section 254(i) of the 1996 Act.

The Commission initially responded to this problem by convening two Commissioner-level meetings with Indian tribal leaders, senior representatives from other government agencies, and FCC staff. In these meetings, Indian leaders identified problems ranging from geographic isolation to lack of information to economic barriers and asked the Commission to respond. The Commission then organized formal field hearings in New Mexico and Arizona, in January and March of 1999, where Indian leaders, telecommunications service providers, local public officials, and consumer advocates testified on many issues, including the quality of telephone service on reservations; the costs of delivering services to remote areas having very low population densities; and the complexities of governmental jurisdiction and sovereignty issues.

Based on the data and analysis provided during these proceedings and in numerous other informal meetings and conversations with Tribal members, officials, and advocacy organizations, the FCC initiated two comprehensive rulemaking proposals that target impediments to telephone service on reservations. The first rulemaking proposal sought comment on, among other things, how current universal service programs might be modified to increase telephone subscribership by providing targeted support to, or otherwise creating incentives for, carriers currently serving Indian Tribes or those potentially willing to do so. The other rulemaking explored topics including how current wireless service rules might be modified to permit and encourage economically efficient wireless service to Indian communities.⁵

In addition to these substantive proposals, the Commission also seeks to respond to the many requests of Indian leaders for a statement of policy that recognizes Tribal sovereignty, federal trust principles, and the importance of agency consultation with federally-recognized Indian Tribes.⁶

Accordingly, the Commission hereby reaffirms its commitment to promote a government-to-government relationship between the FCC and federally-recognized Indian

⁵ This policy statement is being released contemporaneously with the Wireless Bureau's Report and Order in WT Docket No. 99-266 (Extending Wireless Service to Tribal Lands), and the Common Carrier Bureau's Report and Order in the Universal Service proceeding, CC Docket No. 96-45 (Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Universal and Underserved Areas, Including Tribal and Insular Areas).

⁶ In fact, many of the commenters in the wireless and common carrier rulemakings, including the Cheyenne River Sioux Telephone Authority; the Oglala Sioux Tribe; Chickasaw Nation; Mohegan Tribe; Walker River Paiute Tribe; the Picuris Pueblo; the Tuscarora Indian Nation; Salt River Pima-Maricopa Indian Community; Tohono O'odham Nation; Gila River Telecommunications, Inc.; Crow Tribe of Indians of Montana; and the All Indian Pueblo Council have urged the FCC to adopt a policy statement and/or to establish a government-to-government relationship with Indian Tribes.

Tribes. This policy statement is not intended to, and does not, create any right enforceable in any cause of action by any party against the United States, its agencies or instrumentalities, officers or employees, or any person.

II. DEFINITIONS

In this Statement of Policy, we refer to "Indian Tribes" and "Tribal Governments."

The term "Indian Tribe[s]" or "Federally-Recognized Indian Tribes" means any Indian or Alaska Native tribe, band, nation, pueblo, village or community which is acknowledged by the federal government to constitute a government-to-government relationship with the United States and eligible for the programs and services established by the United States for Indians. *See The Federally Recognized Indian Tribe List Act of 1994* (Indian Tribe Act), Pub. L. 103-454, 108 Stat. 4791 (1994) (the Secretary of the Interior is required to publish in the Federal Register an annual list of all Indian Tribes which the Secretary recognizes to be eligible for the special programs and services provided by the United States to Indians because of their status as Indians).

The term "Tribal Governments" means the recognized government of an Indian Tribe that has been determined eligible to receive services from the Department of Interior, Bureau of Indian Affairs. *See Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs*, 65 Fed. Reg. 13298 (March 13, 2000).

III. REAFFIRMATION OF PRINCIPLES OF TRIBAL SOVEREIGNTY AND THE FEDERAL TRUST RESPONSIBILITY

The Commission recognizes the unique legal relationship that exists between the federal government and Indian Tribal governments, as reflected in the Constitution of the United States⁷, treaties, federal statutes, Executive orders, and numerous court decisions. As domestic dependant nations, Indian Tribes exercise inherent sovereign powers over their members and territory. The federal government has a federal trust relationship with Indian Tribes⁸, and this historic trust relationship requires the federal government to adhere to certain fiduciary standards in its dealings with Indian Tribes.⁹ In this regard, the

⁷ The U.S. Constitution cedes to the federal government all power "to regulate commerce...with the Indian Tribes." U.S. Const. art. I, § 8, cl. 3.

⁸ *See, e.g., Seminole Nation v. United States*, 316 U.S. 286, 296 (1942) (citing *Cherokee Nation v. State of Georgia*, 30 U.S. 1 (1831); *United States v. Kagama*, 118 U.S. 375 (1886); *Choctaw Nation v. United States*, 119 U.S. 1 (1886); *United States v. Pelican*, 232 U.S. 442 (1914); *United States v. Creek Nation*, 295 U.S. 103 (1935); *Tulee v. State of Washington*, 315 U.S. 681 (1942)).

⁹ *See, e.g., U.S. v. Mitchell*, 463 U.S. 206 (1983).

Commission recognizes that the federal government has a longstanding policy of promoting tribal self-sufficiency and economic development as embodied in various federal statutes.¹⁰

The Commission also recognizes that the Federally Recognized Indian Tribe List Act of 1994¹¹, makes a finding that the federal government has a trust responsibility to and a government-to-government relationship with recognized tribes.¹²

Therefore, as an independent agency of the federal government, the Commission recognizes its own general trust relationship with, and responsibility to, federally-recognized Indian Tribes. The Commission also recognizes the rights of Indian Tribal governments to set their own communications priorities and goals for the welfare of their membership.

The Commission hereby reaffirms its commitment to the following goals and principles:

1. The Commission will endeavor to work with Indian Tribes on a government-to-government basis consistent with the principles of Tribal self-governance to ensure, through its regulations and policy initiatives, and consistent with Section 1 of the Communications Act of 1934, that Indian Tribes have adequate access to communications services.
2. The Commission, in accordance with the federal government's trust responsibility, and to the extent practicable, will consult with Tribal governments prior to implementing any regulatory action or policy that will significantly or uniquely affect Tribal governments, their land and resources.

¹⁰ See, e.g., *The Indian Financing Act of 1974*, 25 U.S.C. § 1451(1974); *The Indian Self-Determination and Education Assistance Act of 1975*, 25 U.S.C. § 450 (1975); *The Indian Reorganization Act of 1934*, 25 U.S.C. § 461 (1934); and the *Indian Civil Rights Act of 1968*, 25 U.S.C. § 1301 (1968). See also, *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 142 (1980); *New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324, 334 (1983).

¹¹ Pub. L. 103-454, 108 Stat. 4791 (1994).

¹² The Commission notes that President Clinton's Executive Order 13084 of May 14, 1998, *Consultation and Coordination with Indian Tribal Governments*, encourages independent federal agencies to be guided in their duties by principles of respect for Indian Tribal self-government and sovereignty, for Tribal treaty rights and other rights, and for the responsibilities which arise from the unique federal trust relationship.